

Ruppert



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: San Antonio Floor Finishers, Inc.

File: B-241386

Date: February 4, 1991

Robert R. Rice, Esq., Kilpatrick & Cody, for the protester.
William W. Sommers, Esq., Gardner, Ferguson, Sommers & Davis, Inc., for Bexar Floor Covering Company, an interested party.
Gregory H. Petkoff, Esq., and Laurie Stiteler, Esq., Department of the Air Force, for the agency.
George M. Ruppert, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest of rejection of bid offering carpet tiles as equal to specified tiles is denied where agency properly determined that sample submitted was not sufficiently similar to the specified pattern in terms of color and design.
2. Allegations raised for the first time in protester's comments on agency report are untimely where based on information in letters received by protester more than 10 working days prior to filing of comments.

DECISION

San Antonio Floor Finishers, Inc. protests the rejection of its proposal as unacceptable under request for proposals (RFP) No. F41650-90-R-0632, issued by the Department of the Air Force, Kelly Air Force Base, Texas, for carpet tile and stair treads. The protester challenges the rejection of its low-priced proposal as noncompliant with several listed salient characteristics.

We dismiss the protest in part and deny it in part.

The acquisition was synopsisized in the Commerce Business Daily on March 6, 1990. An amended synopsis, published March 14, announced a site visit as "necessary in order to submit proposal." The RFP requested proposals on installation of 14,766 square yards of 18-inch-square carpet tile, designated in part as "P2979 Rainbow Tweeds with pattern T-89-5958," and included a performance work statement setting forth the

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salient characteristics of the carpet. Amendment 0002 to the RFP, issued pursuant to questions raised at the site visit, stated that for any carpet offered, "the material must be equal quality or better" as to pattern T-89-5958, and that the color must be "visibly similar" to that specified in the RFP. Thus, although the carpet items in the schedule listed the requirement as pattern T-89-5958, a pattern which the protester contends is copyrighted by Milliken, the manufacturer, equal items also were acceptable; the agency would evaluate all carpets proposed to determine whether they were equal in design and color to pattern T-89-5958.

Four proposals were received, two offering Milliken pattern T-89-5958 and two offering purportedly equal products. After receipt of initial proposals, the Air Force requested a sample of the carpet tile offered. Based on its evaluation of these samples, the Air Force rejected San Antonio's proposed equal carpet as unacceptable. The agency notified San Antonio by letter of September 17 that its proposal was unacceptable for failure to provide pattern T-89-5958. Thereafter, in a letter dated October 16 (following this protest), the agency advised San Antonio that the carpet sample it submitted was unacceptable because it was not visibly similar in appearance, color or design to the specified Milliken pattern. The Air Force awarded a contract to Bexar Floor Covering Company on September 18.

San Antonio's protest as originally filed is two-fold. First, the protester contends that it was improper for the agency to specify a copyrighted carpet pattern as the basis for comparison of offered equal carpet without providing prospective offerors a sample of the copyrighted pattern; such a sample was necessary, San Antonio asserts, for it to be able to develop an acceptable nearly identical pattern. Secondly, San Antonio maintains that the sample it furnished for evaluation in fact satisfies the "visibly similar" requirement.

San Antonio's first argument is untimely. Under our Bid Protest Regulations, protests of alleged solicitation improprieties must be filed prior to the closing date for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1) (1990). The RFP did not include samples of the specified Milliken carpet and, if San Antonio believed samples were necessary to enable it to develop an acceptable equal pattern, it was

required to protest on this ground prior to the May 21 closing date.^{1/} As the protest was not filed until September 28, after San Antonio's offer was rejected, the protest on this ground is untimely and will not be considered.

San Antonio's second protest ground is without merit. The Air Force rejected San Antonio's offered equal carpet on the basis that the colors and the pattern generally were not similar to the specified pattern. Specifically, the agency explains, the design of the space where the carpet was to be installed is based on a diamond shape; wallpaper, drapes, and furniture, etc. were purchased to fit into this scheme, and the pattern specified in the RFP also carried out this design. San Antonio's carpet sample was found to be based on an "asymmetrical striped pattern having parallel lines with right angles," which did not conform to the diamond-shape scheme. The Air Force also found that the sample was not visibly similar as to the basic color scheme; one color, dark red, appeared to be missing and, while the specified pattern contains no predominant color, San Antonio's sample was determined to be predominantly green and rust.


We have examined the Milliken and San Antonio samples and find that the Air Force's evaluation was correct. San Antonio's sample includes lines that are parallel to the edges of the tile and meet only at right angles, resulting in a square design motif. The Milliken sample includes no dominant lines parallel to the tile edges, the lines instead being positioned diagonally, resulting in a diamond rather than a square motif. Further, San Antonio's sample clearly is comprised primarily of three colors, green and rust/orange on a tan background and, although the protester asserts otherwise, we agree with the agency that there is at best an indistinguishable amount of dark red color in the San Antonio sample. The specified Milliken pattern, on the other hand, appears to contain relatively equal amounts of rust/orange, tan, green, purple and, quite noticeably, dark red. We conclude that the Air Force correctly found that the design and colors of the San Antonio sample were not similar to the specified pattern, and thus properly rejected San Antonio's offer on this basis.

San Antonio argues in its comments on the agency report that the Air Force improperly rejected its proposal only because it did not offer the specified Milliken pattern, that the Air Force improperly based the evaluation on the Milliken pattern,

^{1/} San Antonio reportedly did request a sample from the agency on May 4, but the Air Force refused the request, advising the protester that all necessary information regarding the pattern could be obtained through a permissible site visit.

and that San Antonio could not have satisfied the evaluation standards the agency applied without violating Milliken's copyright on the specified pattern. These arguments are all untimely raised. A protest based on other than alleged solicitation improprieties must be filed no later than 10 working days after the basis of protest was or should have been known. 4 C.F.R. § 21.2(a)(2). Where a protester initially files a timely protest and later supplements it with additional arguments in its comments on the agency report, the later raised arguments must independently satisfy the timeliness requirements; our Regulations do not contemplate the unwarranted piecemeal presentation or development of protest issues. EER Sys. Corp., 69 Comp. Gen. 207 (1990), 90-1 CPD ¶ 123. San Antonio's additional arguments here are based on information that was available from the Air Force's September 17 and October 16 rejection letters. As the protester's comments raising these arguments were not received in our Office until November 20, more than 10 working days after its receipt of those letters, its protest on these grounds is untimely and will not be considered.

The protest is dismissed in part and denied in part.


for James F. Hinchman
General Counsel